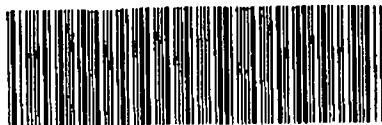


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07-2-12633-9 29102557 RPY 02-01-08

IN COUNTY FILED
CLERK'S OFFICE

A.M. JAN 31 2008 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

Judge D. Gary Steiner
Department 10
Noted For: February 8, 2008

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

DOUGLAS TOBIN,

NO. 07-2-12633-9

Plaintiff,

v.

REPLY TO RESPONSE OF
PLAINTIFF TO DEFENDANT STATE
OF WASHINGTON'S MOTION FOR
SUMMARY JUDGMENT

STATE OF WASHINGTON and
PIERCE COUNTY,

Defendants.

Comes now defendant State of Washington by and through its attorneys undersigned and makes the following reply to plaintiff's response to the motion for summary judgment filed herein by defendant State of Washington.

1. Defendant State of Washington admits that the Stipulation entered between plaintiff and the State of Washington in Pierce County Cause No. 02-1-05810-0 constitutes a written contract between the plaintiff and defendant State of Washington. However, the six year statute of limitations applicable to breach of contract actions does not apply in this case. The more specific statute concerning the time limit to bring an action to recover forfeited property which applies is a two year statute of limitations applies. RCW4.16.100. Since

REPLY TO RESPONSE OF PLAINTIFF
TO DEFENDANT STATE OF
WASHINGTON'S MOTION FOR
SUMMARY JUDGMENT

ATTORNEY GENERAL OF WASHINGTON
Torts Division
7141 Cleanwater Drive SW
PO Box 40126
Olympia, WA 98504-0126
(360) 586-6300

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1 plaintiff's claims in this lawsuit concern the alleged wrongful forfeiture of property to the State
2 of Washington, the two year statute of limitations set forth in RCW 4.16.100 applies to this
3 action.

4 2. The Stipulation filed in Pierce County Cause No. 02-1-05810-0 expressly
5 references to both Cause No. 02-1-05810-0 and Pierce County Cause No. 02-1-01236-3,
6 criminal proceedings which both arose out of the investigation conducted by Washington State
7 Department of Fish and Wildlife agents that culminated in plaintiff's arrest on March 18, 2002
8 and seizure of property covered by the search warrant issued several days prior to his arrest.
9 By its express terms, the Stipulation provided that all property not expressly covered by the
10 stipulation was to be forfeited to the State of Washington. See Appendix A. See Declaration
11 of Tom L. Moore.

12 3. Plaintiff's claim that he did not receive all items he was entitled to receive does
13 not raise an issue of material fact. There is no admissible evidence that he did not receive the
14 property he was entitled to receive pursuant to the December 10, 2003 Stipulation. To the
15 contrary his designated representative acknowledges receipt of the majority of the items
16 covered by the Stipulation. See Declaration of Stacey Tobin. All other items covered by the
17 Stipulation were returned to plaintiff's designated representative. See Declaration of Tom L.
18 Moore.

19 4. Defendant State of Washington incorporates the arguments set forth in its Reply
20 dated January 18, 2008 which it filed in response to plaintiff's memorandum in support of what
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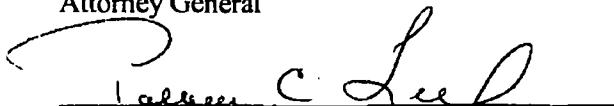
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1 he entitled his motion for summary judgment, dated December 23, 2007. A pleading which
2 has not been noted for hearing and is not properly before the court.¹

3 Respectfully submitted this 29 day of January 2008.

4

5 ROBERT M. MCKENNA
6 Attorney General


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8 PATRICIA FETTERLY, WSBA No. 8425
9 Assistant Attorney General

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24 Following service of the state's motion for summary judgment dated December 21, 2007, plaintiff filed
25 a pleading which he entitled a "motion for summary judgment" which was not noted for hearing, but appeared to
address issues raised in the state's motion. Since this pleading was received after the state filed its motion, the
state treated it as a response to its summary judgment motion and filed a reply dated January 18, 2008.
Thereafter on January 28, 2008 the state received a pleading entitled "Response to Defendant's Summary
Judgment." The state incorporates the arguments set forth in its reply dated January 18, 2008 with this reply.

REPLY TO RESPONSE OF PLAINTIFF
TO DEFENDANT STATE OF
WASHINGTON'S MOTION FOR
SUMMARY JUDGMENT

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PROOF OF SERVICE

I certify that I caused to be served a copy of this document on all parties or their counsel of record on the date below as follows:

US Mail Postage Prepaid via Consolidated Mail Service

ABC/Legal Messenger

State Campus Delivery

Hand delivered by _____

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 29 day of January, 2008, at Tumwater, WA.

Laurel B. DeForest
LAUREL B. DeFOREST

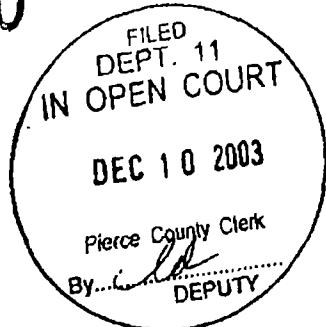
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APPENDIX A

11329 2/1/2008 00146

29826 12/11/2003 89827

ORIGINAL



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 02-1-05810-0

vs.

DOUGLAS JOHN MARTIN TOBIN,

STIPULATION ON FORFEITURE OF
PROPERTY

Defendant.

The State of Washington represented by Deputy Prosecutor Tom L. Moore and the defendant DOUGLAS JOHN MARTIN TOBIN represented by Attorney Allen Ressler enter into the following stipulation regarding the forfeiture of property, seized pursuant to a series of search warrants served on March 18th, 2002. The defendant was originally served with a Notice of Seizure and Intent to Forfeit Property on March 22nd, 2002, under cause number 02-1-01236-3. The State subsequently filed an Amended Information under this cause number charging the defendant with Leading Organized Crime.

The State and the Defendant reach the following agreement:

The State will release to the defendant or his representative:

One pair of binoculars *YH JL*
\$850.00 seized from the defendant's person

The State's lien on a 1969 Chevrolet Nova, license CV3982

The State's hold on two bank accounts located at Bank of America, Fife Washington,
#16492605 and #70458401

Personal property found on the boat Typhoon to include, medicine bag, clothes, etc.

The rest of the property seized by the State will become the property of the State of Washington, Department of Fish and Wildlife, Statewide Enforcement Program. This includes all property listed in the (Attached) Notice of Intent to Forfeit, except that listed above, and any other property seized listed or not, to include: electronics on the boats seized, commercial fishing gear, and weapons.

gencaption.dot

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

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28826 12/11/2003 00029

1 Tom L. Moore, DPA #17542
2
3 Allen Ressler, Attorney for Defendant
4
5 Douglas John Martin Tobin
6

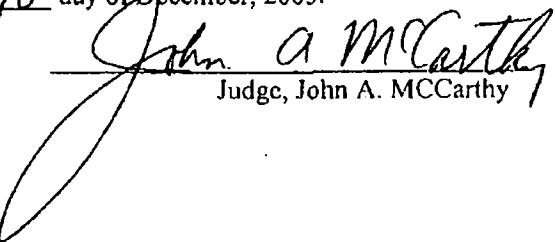
COURT ORDER

7 The Court being fully advised in this matter and having reviewed the Stipulation
8 of the Parties.

9 NOW HEREOFRE

10 ORDERS that the property listed above shall be forfeited to the State of Washington,
11 Department of Fish and Wildlife, Statewide Enforcement Program, except that property that by
Stipulation is to be returned to the defendant.

12 DONE IN OPEN COURT this 16 day of December, 2003:
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15 Judge, John A. McCarthy
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